

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

**IN THE MATTER OF:**

**ELITE FUEL FOUR, INC.  
IOWA GAS GROUP, INC.,  
USA GAS DEPOT CORPORATION,  
KAVYA CORPORATION, AND  
ISH OBEROI, INDIVIDUALLY**

**UST NO. 198608198  
102 N. Jefferson Ave., Indianola, IA**

**ADMINISTRATIVE ORDER  
NO. 2010-UT-19**

**To: Ish Oberoi  
9 Elk Run Rd.  
Waterloo, IA 50703**

**Elite Fuel Four, Inc.  
Reg. Agent, Ish Oberoi  
9 Elk Run Rd.  
Waterloo, IA 50703**

**Iowa Gas Group, Inc.  
Reg. Agent, Shital N. Mehta  
438 New York Lane  
Elk Grove Village, IL 60007**

**USA Gas Depot Corporation  
Reg. Agent, Farrukh Pasha  
2919 E 14TH ST  
Des Moines, IA 50316**

**I. SUMMARY**

This administrative order (Order) requires each of the above-listed parties to pay an administrative penalty as described in Division V below within 30 days of receipt of this Order unless the Order is appealed as provided in Division VII below. The penalty is assessed for violations of underground storage tank (UST) regulations at the referenced facility.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

**Paul Nelson, Environmental Specialist  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8779**

**Relating to legal issues:**

**Tamara Mullen, Attorney  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: 515-281-8934**

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code Chapter 455B, Division IV, Part 8 and Department rules contained in 567 Iowa Administrative Code (I.A.C.) Chapter 135. Iowa Code section 455B.109 and administrative rules in 567 I.A.C. Chapter 10 authorize the Director to assess administrative penalties up to \$10,000.

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**III. STATEMENT OF FACTS**

1. Elite Fuel Four, Inc. (EF4) is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Mr. Ish Oberoi is the registered agent for EF4, is the President of EF 4, and upon information and belief, is a principal stockholder in EF 4.
2. EF4 currently owns the UST site at 102 N. Jefferson Avenue, Indianola, IA. It purchased this site on December 28, 2007 from Iowa Gas Group, Inc. (Iowa Gas), an Illinois corporation that has never registered in Iowa. Iowa Gas owned this parcel for exactly one month, having bought it from Krause Gentle Corporation (fictitious name Kum & Go) on November 28, 2007.
3. There are USTs at this site: a 6,000-gallon petroleum UST and an 8,000-gallon petroleum UST. Both tanks were installed in 1960 and were lined in 1992.
4. Mr. Paul Ghuman, as the authorized representative of Iowa Gas, registered with the Department as the owner of the tanks on November 28, 2007, the same day the sale of the parcel went through. Mr. Ghuman is president of Iowa Gas and upon information and belief a principal stockholder.
5. An UST insurance company, Petroleum Mutual Marketers Insurance Cooperative (PMMIC), issued insurance for this property to "Iowa Gas Group, Inc." with effective dates of July 27, 2007 to July 26, 2008. At some point in 2008, months after the property was sold, this policy was transferred to "Elite Fuel" with Mr. Oberoi as an "additional insured."
6. As of the current date, EF 4 is still the documented owner of the property and the tanks. At all times relevant to this Order, Mr. Ish Oberoi of EF 4 has been the person in control of, or having responsibility for, the daily operation of the USTs at this location. He has been the primary contact person responsible for maintaining compliance with the regulatory requirements as stated in this Order.
7. In August 2008 the Department received notice from PMMIC that the insurance policy had expired.
8. After receiving PMMIC's cancellation notice, the Department sent Mr. Ghuman of Iowa Gas a letter on August 29, 2008 stating that the UST system must be shut down until replacement insurance was acquired. The letter required Mr. Ghuman to return tank registration tags, which must be in place for the system to receive fuel. The Department also required Mr. Ghuman to submit proof of replacement insurance before operating the system again.
9. When Mr. Ghuman failed to respond to the letter, the Department's central office UST staff asked Field Office 5 (FO5) to visit the site to recover the tank registration tags. Ms. Janet Gastineau and Mr. Bill Gibbons of FO5 visited the site on October 2, 2009 and noted that the store was still operating and dispensing fuel. Mr. Gibbons removed the tank tags.

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10. On October 8, 2008, Mr. Nathan Torpen of Tanknology performed a cathodic protection survey at this location, but because the cathodic protection system was not operating when they arrived, the results were incomplete. The rectifier was turned back on, but the system could not be checked again for at least 60 days.
11. Tanknology returned on October 16, 2008 to perform a line tightness test of the tank system and all tests passed.
12. The Department did not receive tank management fees for this property, due by January 15, 2009.
13. On February 2, 2009, Mr. Paul Nelson of the Department's central office UST staff emailed Mr. Farrukh Pasha, authorized representative of USA Gas Depot Corporation, the entity who identified itself as the current owner and operator (registering itself as such with the Department in March 2009) regarding the outcome of the cathodic protection test performed at the site. Mr. Pasha had failed to retest the system after 60 days as recommended. Mr. Nelson inquired into how long the rectifier had been shut off before Tanknology's October 2008 visit.
14. In response, Mr. Herb Cofer of Tanknology performed a compliance inspection of the site's cathodic protection system on February 26, 2009. Everything was found to be within the criteria set in place.
15. The Department sent Keck Transport, Inc. a letter on March 3, 2009 stating that the tanks were now eligible to receive fuel.
16. As noted in paragraph 13 above, USA Gas Depot Corporation registered with the Department on March 3, 2009 as the UST owner and identified Mr. Farrukh Pasha as the authorized representative. The facility name was listed as "Super Savings." The registration did not identify a separate UST "operator/lease."
17. Zurich provided insurance coverage to "USA Gas Depot Corporation" for this property from January 27, 2009 to January 27, 2010, although the policy was cancelled August 31, 2009.
18. The Department received a third UST registration form dated May 7, 2009 which identified the current UST owner as "Elite Fuel," identified the last UST owner as "Super Savings," and the current "operator/leasee" as Kavya Corporation. The registration was signed by Mr. Kevish Patel who is a corporate officer of Kavya Corporation.
19. Related, the Department also received a certificate of insurance with Ace American Insurance on April 9, 2009 identifying the insured party as Kavya Corporation d/b/a Super Savings Convenience Store. This insurance expired April 9, 2010.
20. Upon information and belief, the site has been without insurance since April 2010.

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21. The Department learned the store had closed and stopped dispensing fuel sometime in April 2009 but a notice of temporary closure was never submitted to the Department.
22. Mr. Gibbons conducted an UST system inspection on November 30, 2009. The purpose of this inspection was to check the tank system to make sure proper temporary closure procedures had been followed.
23. FO5 issued a Notice of Violation (NOV) to Mr. Pasha on December 21, 2009 for improper temporary closure and failure to maintain cathodic protection. The NOV required the owner to take action to secure the UST system and submit additional records by January 22, 2010.
24. The Department did not receive a third-party compliance inspection, due no later than December 31, 2009.
25. The Department did not receive tank management fees, due by January 15, 2010.
26. Because the Department has yet to receive the records requested in the NOV, the third-party compliance inspection, or tank management fees for the second year in a row, this site was referred to the Legal Services Bureau for enforcement.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code Chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTs constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTs. The Commission has adopted such rules in 567 I.A.C. Chapters 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).

**OWNER LIABILITY**

2. Iowa Code section 455B.471(6) defines "owner" of USTs. Iowa Gas acquired this property in November 2007 and registered with the Department as the tank owner and operator that same month. EF4 bought the site from Iowa Gas in December 2007 and finally registered as the tank owner in June 2009. USA Gas Depot Corporation registered with the Department as the tank owner in March 2009 even though EF4 at all times owned the property, and presumably the tanks. A PMMIC Insurance policy from June 2007 through July 2008 named Iowa Gas then EF4 as the primary beneficiary, with Mr. Oberoi of Iowa Gas as a

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secondary beneficiary. As such, the Department is holding EF4 and Iowa Gas both liable as tank owners.

**OPERATOR LIABILITY**

3. Iowa Code section 455B.471(5) defines an "operator" of USTs as "a person in control of, or having responsibility for, the daily operation of the underground storage tank." EF4 has been the sole owner of the property since December 2007 and was the owner of a PMMIC insurance policy until it expired in 2008. USA Gas Depot Corporation registered as the tank owner and operated the site from early 2009 until at least June 2009, when Kavya Corporation registered as the new operator and acquired insurance with Ace American. Mr. Ish Oberoi in his capacity as president of EF4 was the primary person having control of the daily operation and regulatory compliance of the UST system. Therefore, the Department is holding EF4, USA Gas Depot Corporation, Mr. Ish Oberoi, and Kavya Corporation as liable operators.

**FINANCIAL RESPONSIBILITY**

4. Owners and operators of USTs must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. 567 I.A.C. 136.22. Upon cancellation of UST insurance the named insured has six months in which to file a claim under the policy or the claim may be denied. See 567 I.A.C. 136.18.
5. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. See 567 I.A.C. 136.20. They must submit such proof to the Department upon request. 567 I.A.C. 136.19.
6. The above-stated facts show that the PMMIC insurance held by Iowa Gas and then transferred to EF4 expired in August 2008 and was not replaced until January 2009, five months later. The replacement insurance, acquired by USA Gas Depot Corporation from Zurich, was cancelled in August 2009. However, Kavya Corporation had acquired insurance from Ace American Insurance in April 2009, so the site was insured even after the cancellation. This insurance expired in April 2010, and the site has been without insurance the last 2 months. In totality, the site has had 7 months without financial responsibility in violation of 567 I.A.C. Chapter 136.

**CATHODIC PROTECTION**

7. Pursuant to 567 I.A.C. 135.4(2)(a), all corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.
8. The tanks at this site are steel and have impressed current cathodic protection.

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9. A site inspection in November 2009 indicated the cathodic protection system was not turned on in violation of this rule.

**TANK FEES**

10. Owners and operators are required to pay a tank registration fee of \$10 on all USTs that are required by law to be registered. See Iowa Code section 455B.473(5).
11. Owners and operators are required to pay an annual tank management fee of \$65 per tank on all tanks larger than 1,100 gallons. Iowa Code section 455B.479. Department rules at 567 I.A.C. 135.3(5) require payment of the annual \$65 tank management fee by January 15 of each year. Upon payment, an annual tank tag is issued for the period April 1 to March 31. The Department may withhold issuance of a tank tag for nonpayment of fees or failure to provide proof of financial responsibility. See Iowa Code section 455B.473(9). It is illegal to accept or deliver fuel into tanks that have not been issued and do not display tank tags. Id. at (8).
12. Iowa Code section 455B.473(8) provides that owners and operators shall pay a \$250 late fee per tank for failure to obtain annual tank tags. Imposition of a late fee does not preclude the assessment of an administrative penalty under Iowa Code section 455B.476.
13. The Department did not receive tank management fees for the two registered tanks at this site in either 2009 or 2010.

**THIRD-PARTY COMPLIANCE INSPECTION**

14. Pursuant to 567 I.A.C. 135.20(1), owners and operators are required to retain a Department-certified compliance inspector and conduct a compliance inspection by December 31, 2007. Another compliance inspection must then be completed within the two-year period from January 1, 2008 to December 31, 2009 with at least a six month separation between the prior compliance inspections. After the biennial inspection for the period of 2008-2009, all subsequent inspections must be completed within 24 months of the prior inspection, with a minimum separation of six months.
15. The above-stated facts show that EF4, USA Gas Depot Corporation, and Kavya Corporation were all owners and/or operators during the 2008-2009 period and failed to complete a third-party compliance inspection in violation of 567 I.A.C. 135.20(1).

**TEMPORARY & PERMANENT CLOSURE**

16. When USTs are taken out of service for three months, the tanks must be temporarily closed in accordance with 567 I.A.C. 135.15(1) and a certification of temporary closure form submitted to the Department. All fuel from the tank must be removed to a de minimus amount (around 1 inch) and all fill pipes and vents must be secured. Id.

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17. The rules governing the permanent closure of USTs are found in 567 I.A.C. 135.15(2). Pursuant to those rules, any UST that is temporarily closed for more than twelve months must be permanently closed either by removal or filling in place with an inert material *unless* the tank meets the system performance and upgrade standards in 567 I.A.C. 135.3(1) and (2). During permanent closure, owners and operators of the USTs are required to conduct a site closure investigation, including soil and water sample analysis, to determine if a release of a regulated system has occurred. 567 I.A.C. 135.15(3). A closure report must be submitted to the Department within forty-five days of tank closure. *Id.* at 135.15(3)"e". An owner or operator must give the Department at least thirty days notice of intent to close the USTs. *Id.* at 135.15(12).
18. The above-stated facts show that these tanks have been closed and inactive since at least April 2009 without complying with the temporary closure rules. Additionally, since the tanks have been closed for more than twelve months (to date, 14 months), EF4, USA Gas Depot Corporation, and Kavya Corporation are in violation of 567 I.A.C. 135.15 which requires either reactivation if the tanks meet the upgrade standards or permanent closure.

**V. ORDER**

THEREFORE, the named parties are ordered to comply with the following:

1. EF4 or Iowa Gas shall immediately restart the cathodic protection system and have the system tested by a Department certified cathodic protection tester and submit results to the Department within 14 days of receipt of this Order.
2. EF4 or Iowa Gas shall immediately submit to the Department a certification of temporary closure form within 14 days of receipt of this Order.
3. EF4, Iowa Gas, USA Gas Depot Corporation, and Kavya Corporation, are jointly and severally liable for delinquent tank management fees for 2009 and 2010, including late fees of \$1,260, calculated as  $(2 \times (65 \times 2) + 2(\$250 \times 2))$ . Payment shall be made no later than 30 days after receipt of this Order, paid to the "Iowa Department of Natural Resources." All checks must be accompanied by a cover letter identifying the UST Registration Number and this Order by name and number as provided in the caption.
4. Within 14 days of receipt of this Order, EF4 or Iowa Gas shall submit acceptable proof that the USTs are covered by an approved form of financial responsibility in accordance with 567 I.A.C. Chapter 136. If EF4 or Iowa Gas fail or are unable to obtain financial responsibility coverage by July 5, 2010, they must retain a certified groundwater professional and complete a site check in accordance with 567 I.A.C. 135.6 and submit a report to the Department.
5. Within 14 days of receipt of this Order, EF4 or Iowa Gas shall retain a Department certified compliance inspector and complete an initial inspection no later than July 5,

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2010 and complete all corrective actions within 60 days or an earlier date if required by Department rules.

6. All named parties are jointly and severally responsible to pay an administrative penalty of \$4,000. Additionally, EF4, Iowa Gas, and Mr. Oberoi are jointly and severally responsible for an administrative penalty of \$5,426. Finally, EF4 and Iowa Gas are jointly and severally responsible to pay \$574 representing economic benefit described in Division VI. All payments shall be by check payable to the "Iowa Department of Natural Resources" within 30 days of receipt of this Order unless the Order is appealed as provided in Division VII below. All checks must be accompanied by a cover letter identifying this Order by name and number as provided in the caption.

**VI. PENALTY**

Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this Order.

Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code Chapter 455B or rules, permits, and orders promulgated or issued pursuant to it. Rule 567 I.A.C. Chapter 10 was adopted by the Commission to implement this provision. Pursuant to rule 567 I.A.C. 10.2, the Department has determined that a penalty should be assessed. The Department reserves the right to reassess the penalty rationale if on appeal, additional information warrants a modification. The administrative penalty is determined as follows.

**ECONOMIC BENEFIT:** Avoided costs include the cost of maintaining continuous insurance, as the facts above show lapses between August 2008 and January 2009 (5 months) and April 2010 to date (2 months), for a total lapse of 7 months. Insurance is estimated to be \$500 per tank for the year, or roughly \$41 per tank per month. For two tanks to be uninsured for seven months, therefore, is roughly \$574. EF4 and Iowa Gas, as joint tank owners, are responsible for ensuring financial responsibility exists. Therefore, \$574 is assessed jointly and severally against EF4 and Iowa Gas. Additionally, The cost of a compliance inspection is about \$600. Assuming the parties comply with this order, the economic benefit is represented by the interest earned on the cost of compliance over the period of delayed compliance. The Department is reserving the right to assess for this.

**GRAVITY:** The violations present at this site include operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to maintain corrosion protection. Maintaining continuous financial responsibility coverage on UST systems is one of the most important regulatory requirements as it guarantees funds exist to clean up the environment, and protect individuals and their property, should a release of a regulated substance take place. EF4 and Iowa Gas allowed this site to be without insurance for at least 7 months. Failure to complete a third-party compliance inspection is also a major violation of the UST operation and leak prevention regulatory scheme. Likewise, not maintaining corrosion protection makes it more likely that a



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future release will take place. For this factor, \$2,000 is assessed jointly and severally against EF4, Iowa Gas, USA Gas Depot Corporation, Kavva Corporation, and Mr. Oberoi for their failure to conduct a third-party compliance inspection. Additionally, \$2,713 is assessed jointly and severally against EF4, Iowa Gas, and Mr. Oberoi for operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to maintain corrosion protection.


**CULPABILITY:** EF4, Iowa Gas, USA Gas Depot Corporation, and Mr. Oberoi own and operate numerous UST facilities in Iowa and other states, and know or should know what is required by UST regulations. Moreover, the Department sent numerous letters to the named parties and conducted site visits, following those visits with clear guidance on compliance actions. Therefore, \$2,000 is assessed jointly and severally against EF4, Iowa Gas, USA Gas Depot Corporation, Kavva Corporation, and Mr. Oberoi for their failure to conduct a third-party compliance inspections. Additionally, \$2,713 is assessed jointly and severally against EF4, Iowa Gas, and Mr. Oberoi for operating without financial responsibility, failure to maintain continuous financial responsibility, failure to temporarily close the UST system, and failure to submit records.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.476, and Chapter 567 I.A.C. 7 which adopts by reference Chapter 561 I.A.C. 7, the named parties may file a written Notice of Appeal to the Commission within 30 days of receipt of this Order. The party should file this Notice of Appeal with the Director of the Department, and must identify the specific portion or portions of this Order it wishes to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code Chapter 17A and 561 I.A.C. Chapter 7.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violation alleged in this Order, as well as any subsequent violations in the event the party violates the Order, including failure to timely pay any penalty.

  
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RICHARD A. LEOPOLD, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of  
June, 2010

**Elite Fuel Four, Inc., et al:** Field Office 5, Janet Gastineau, Bill Gross, Elaine Douskey, V.I., V.L.